



A SUMMARY OF THE PRELIMINARY GLOBAL POUND CONFERENCE (GPC) DATA IN 2016: TRENDS AND THEMES

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Approximately 700 people participated in Global Pound Conference (GPC) events in 2016. Another 3,000 are expected in 2017. The aggregated data from the first seven events² that have taken place already show some interesting themes and trends that are summarized in this paper. Although these themes and trends will evolve and may change significantly, as the GPC Series progresses and more results are obtained from additional countries and different dispute resolution cultures – they already provide interesting food for thought and ideas which could shape the future of commercial dispute resolution and improve access to justice in commercial disputes.

1. Demographics:

The results were collected from five stakeholder groups:

- (1) **Parties:** Approximately 90 users (13% of participants) who are involved in disputes and use commercial dispute resolution services (e.g. business managers or in-house counsel involved in litigation, arbitration, mediation or mixed mode processes);
- (2) **Advisors:** Approximately 160 external advisors (24% of participants) who assist Parties in managing their disputes (e.g. external lawyers, experts, forensic accountants);
- (3) **Adjudicative Providers:** Approximately 130 providers (20% of participants) of adjudicative commercial or civil dispute resolution services (e.g. judges or arbitrators) or organizations providing such services;
- (4) **Non-Adjudicative Providers:** Approximately 170 providers (27% of participants) of non-adjudicative commercial or civil dispute resolution services (e.g. conciliators, mediators or ombudsmen) or organizations providing such services ; and
- (5) **Influencers:** Approximately 105 miscellaneous influencers (16% of participants,) e.g. academics, government officials, educators, policy advisors), who do not participate in commercial disputes but are influential in the dispute resolution market.

The GPC data and demographics are still tentative and subject to a final report to be issued in 2018 by the GPC's [Academic Committee](#). The exact numbers of the initial votes to be counted in the final results based on these interim results cannot be determined yet with precision, as there are small gaps between some of the votes registered and the stakeholder categories these votes relate to. (For example, approximately 50 votes have been left out of the aggregated data so far, due to the Central Organizing Group's inability to correlate some voters to their stakeholder groups during the initial registration process.

These votes can be properly allocated only once the “deep data” generated during the GPC

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² The 7 locations in 2016 were: Singapore, Mexico City, Lagos, New York, Geneva, Toronto and Madrid.

Series can also be analysed and cross-checked). For an example of the “deep data” that the GPC Series is compiling, please see the first GPC report for the opening event that took place in Singapore on 18-19 March 2016 that is available [here](#).³ The results contained in this article are based only on the “live” data generated immediately during each GPC event using the PowerVote electronic voting system used to collect stakeholder votes at all events. The numbers and results summarized in this paper were provided by PowerVote and can all be found [here](#).⁴

2. Methodology:

This paper digests the answers to the 20 “[Core Questions](#)” that were prepared by the GPC’s [Central Organizing Group](#) (COG). The questions were voted on at the beginning of each session in a GPC Series event (normally four sessions of 1.5 hours each), during which five Core Questions are presented for vote in the first 10-15 minutes of each session using a PowerVote electronic voting application. The votes thus reflect stakeholders views before any substantive presentations or discussions have occurred.

The Core Questions were established following extensive rounds of consultations with representatives of all stakeholder groups and members of the GPC’s Academic Committee. At each GPC event, participants are asked to rank their three top choices from several options presented in the form of a multiple choice question. The first option selected receives 3 points, the second option selected receives 2 points, and the third option selected receives 1 point. The number of points collected for each option is then accumulated and compared to the total number of points that could have been awarded for that option had everyone present given it 3 points (i.e. a “100%” score).

Consequently, all percentages expressed are based on the number of points each option obtained compared to the 100% maximum number of points that option could have received (the number of attendees times 3 points). The resultant percentages indicate a relative popularity ranking rather a percentage of all the points actually allocated to each option from the total number of points available in each case. As a result, the percentages do not add up to 100% in each column.

This way of scoring was selected as it facilitated comparison of the popularities of each option in relation to a 100% score in order to identify which options were most preferred by which stakeholder groups. The results obtained for each question are first expressed as an aggregate bar chart, showing the collective votes across all stakeholder groups, followed by a cross-sorted bar chart that compares the preferences and percentage rankings of each stakeholder group for each option. This enables comparisons regarding the respective popularity of each option within and across stakeholder groups.

3. Results:

The preliminary data from the seven events that took place in 2016 show significant gaps

³ <http://globalpoundconference.org/gpc-series-data/the-singapore-report#.WH1m6vkrKUK>.

⁴ [http://globalpoundconference.org/Documents/Aggregated Data Report GPC_28Dec.pdf](http://globalpoundconference.org/Documents/Aggregated%20Data%20Report%20GPC%2028Dec.pdf).

PriceWaterhouseCoopers, Herbert Smith Freehills and the GPC’s Academic Committee will also be providing additional analyses soon, showing numbers are likely to be more precise. It is not expected, however, that they will be materially different.

between and among stakeholder groups. The preferences and priorities voted by Parties involved in commercial and civil disputes can be perceived as representing the “demand” side of the market for dispute resolution services), whereas Providers can be perceived as reflecting the “supply” side of the dispute resolution services market. Arguably, Advisors (i.e. external lawyers and experts) belong both on the “demand” side and the “supply” side.

Viewed either way, there are notable gaps not only between the “demand” and “supply” sides of the market, as well as between Advisors and their clients, and between Advisors and Providers. There are also a few, yet notable, differences within the supply side of the market, between Adjudicative Providers (judges and arbitrators) and Non-Adjudicative Providers (mediators and conciliators). Miscellaneous Influencers (academics, government officials and policy makers) also seem to have distinct views of their own.

The differences that emerge thus far among the various patterns of votes suggest that greater emphasis should be placed by all stakeholders on helping Parties to focus on their procedural choices early on in all cases, rather than simply assuming that any given process should be the norm. This presages one means of improving the future of dispute resolution and access to justice for commercial disputes; however it remains to be seen if the final GPC results and report will support this tentative observation.

What follows is a brief analysis of the GPC results in 2016, supporting the above summary. This synopsis does not claim to provide any empirical truths, as the initial data collected by the GPC Series needs to be approached with caution and circumspection for several reasons. Most notably, those are the self-selecting nature of the participants at different GPC events, the limited numbers of representatives from some stakeholder groups in some cities, and different cultural approaches to conflict prevention and resolution across professional and educational divides (e.g. civil law v. common law jurisdictions).

It is only possible to identify and assess general themes and trends that appear to emerge from the data, with the understanding that the data is susceptible to divergent interpretations by stakeholders from different countries and cultures. This summary is also no doubt influenced by the author’s own biases when interpreting the data (despite his effort to be objective). It is therefore safe to say that the current data still presents uncertainty, other than the fact that stakeholder groups tend to vote differently from one-another.

Session 1 ACCESS TO JUSTICE & DISPUTE RESOLUTION SYSTEMS: WHAT DO PARTIES WANT, NEED AND EXPECT?

Q 1.1 *What outcomes do Parties most often want before starting a process in commercial or civil disputes?*

- Financial outcomes. All stakeholder groups seem to value financial outcomes (e.g. damages and compensation) over action-focused outcomes (e.g. injunctions or specific performance of obligations) as reflecting what Parties prefer at the outset of a commercial dispute resolution process (with votes ranging from 60-80% in popularity).
- Action-focused outcomes. The only stakeholder group to prefer action-focused outcomes over financial outcomes were Influencers.
- Relationships and psychological outcomes. These outcomes, such as e.g. vindication or a sense of procedural fairness, while not unimportant, are perceived as significantly

less so for all stakeholder groups (ranging from 18-39%); Parties themselves rated relationship-focused outcomes at 34% as compared to psychological outcomes at 22%.

- Judicial outcomes. Outcomes involving e.g. setting judicial precedents or rule of law seemed to be of far lower importance (5-11%).

Q 1.2 *When Parties involved in commercial disputes are choosing the type(s) of dispute resolution process(es) to use, what has the most influence?*

- The global results to this question would suggest that there is little difference between the two top priorities that most influence Parties' choices: "efficiency" (at 64% popularity) and "advice" (at 61% popularity), with "predictability" coming in a distant third (at 32% popularity).
- In the cross-sorted results by stakeholder group, however, parties rank "efficiency" at 67% above "advice" (44%) and predictability (32%).
- The gap between the first and second choice for Parties was significantly greater compared to all other stakeholders.
- Advisors ranked their own advice as more important than efficiency (68% compared to 63% popularity).
- This result contrasts with relatively low scores for the options: "relationships" (15% average ranking), "industry practices" (13% ranking), and "confidentiality" (13% ranking).
- While Parties did rank "relationships" more highly than all the other stakeholder groups (at 24% compared to the average of 15%), this was clearly a fourth place consideration after efficiency, advice and predictability.

Q 1.3 *When lawyers (whether in-house or external) make recommendations to Parties about procedural options for resolving commercial dispute, what has the most influence?*

The combined data suggests that the "type of outcome" (57%) as well as "familiarity with a process" (also 57%) is equally important in influencing the type of processes lawyers recommend to their clients. The option "impact on costs/fees that lawyers can charge" was also significant, coming in at third place (at 41%). "Relationships" and "industry practices" ranked significantly lower (at 21% equally).

The cross-sorted results showed some interesting differences. The gaps between each of the first three choices were much greater for Advisors as a stakeholder group. They ranked "type of outcome" first (70% popularity ranking), followed by "familiarity" second (at 47%) and "impact on fees" third (at 34%). All other stakeholder perceived fees as also being in third place but at higher rankings (ranging from a 36% ranking by Parties to a 49% ranking by Adjudicative Providers).

While Advisors admit that impact on costs/fees are indeed an important criterion for them (at 34%), the type of outcome sought by the Parties was far more important (at 70%), indicating that Advisors are putting their clients' wishes first. The ranking of "familiarity" (ranked 1st by Adjudicative Providers, Non-Adjudicative Providers and Influencers at 60-65%) as compared to how this option

was ranked by Parties and Advisors (2nd at 52% and 47% respectively) shows how important education continues to be.

Adjudicative Providers and Influencers tended to rank “industry practices” (at 17% and 23% respectively) slightly above “relationships” (which they both ranked at 16%), whereas Parties, Advisors and Non-Adjudicative Providers tended to rank relationships slightly higher, at 4th choice with a 28%, 25% and 21% ranking respectively.

It is interesting to note that “relationships” ranked comparatively low both in Q 1.2 and in this question, including by Parties (who ranked this option as their 4th choice at 24% for Q 1.2 and at 28% for Q 1.3).

Q 1.4 *What role do Parties involved in commercial disputes want Providers to take in dispute resolution processes?*

This question highlights some interested discrepancies and gaps in what is currently offered in the commercial dispute resolution marketplace. While there was clear and unanimous consensus for the first choice across all stakeholder groups in both the global data and in the cross-sorted data for option 5 (“*the parties initially do not have a preference but seek guidance from the providers regarding optimal ways of resolving their dispute*” at 63%), there was great disparity between stakeholders’ second, third and fourth choices – whether Providers should decide on both procedural and substantive issues, or if Parties should decide on both, or whether issues of process and substance should be split between the Parties and the Providers.

The data suggests that **after initiating litigation, arbitration or mediation proceedings all stakeholders are still unclear as to what sort of role they really want Providers to take, and that they would prefer receiving more guidance as to the Parties’ options.**

Parties understandably prefer to keep as much control as possible (ranking control of issues process and outcome by the Parties at second place with a 43% popularity ranking). What was more surprising, however, was that all stakeholder groups ranked last what are currently the most common dispute resolution processes – litigation and arbitration – at 27% (“*the providers decide on the process and how the dispute is resolved*”). **No stakeholder groups are in favour of abdicating control to both issues of process and substance to Providers, yet this is the most common form of dispute resolution process.**

Even Adjudicative Providers ranked this option last (at 28%) compared to Parties retaining control of both issues (their 2nd choice at 37%).

Advisors were strangely out of sync with all other stakeholder groups on this issue, and were far from sharing the view of their clients on their 2nd, 3rd and 4th preferences. They ranked the option of Parties keeping control of process and substance as their 4th choice (at 31%), believing that while Parties should decide issues of process, they should leave it to Providers to decide how the dispute should

be resolved (their 2nd preference at 44%).

Non-Adjudicative Providers were also surprising in their votes: they selected Parties keeping control of process and outcome only 3rd (at 29%), and seemed to prefer Providers deciding issues of process (at 48%). Thus, paradoxically, Adjudicative Providers were far more aligned with Parties on in regards to these retaining control over process and outcomes (ranking this option their 2nd choice at 37%) than were Non-Adjudicative Providers (who ranked this option only as their 3rd at 29%).

These answers and apparent confusion about who should preferentially decide issues of process and outcomes supports the notion that some form of early guidance should be offered by Providers at the beginning of all commercial and civil disputes, such as Guided Choice. This almost never happens in practice.

The data also suggests that Advisors and Providers may tend to underestimate the extent to which Parties prefer to keep control of the outcome and the process to themselves rather than to delegate it immediately to a tribunal. Interestingly, save for Non-Adjudicative Providers and Influencers (who both ranked fully adjudicated outcomes as their 4th preference at 27% and 29% respectively), Advisors and Adjudicative Providers ranked litigation and arbitration as their last choice 30% and 28% respectively) – but very closely to Parties deciding everything themselves (31% and 27% respectively). It seems, as a result, that what is most commonly used in national courts today is not what Parties, Advisors or even judges and arbitrators prefer.

Q 1.5 *What role do Parties involved in commercial disputes typically want lawyers (i.e. in-house or external counsel) to take in the dispute resolution processes?*

The two most popular answers at the collective level (tied at 65% popularity ranking) are possibly somewhat misleading: “speaking for parties and/or advocating on a party’s behalf”, and “working collaboratively with parties to navigate the process” appear to be collective first choices, but the cross-sorted data shows a different story.

Parties would clearly prefer their lawyers to be collaborative more than act as spokespersons or advocates (1st choice at 67% and 2nd choice at 54%), whereas Advisors believe their clients prefer them to act as spokesperson/advocates (1st choice at 77%) and only to act collaboratively as a 2nd choice (63% ranking).

All other stakeholders also preferred Advisors to act collaboratively rather than as spokespersons/advocates (ranging from 62%-70% rankings). The 3rd most popular option for Parties was that their lawyers should act as experts who provide their opinions but do not act on behalf of the Parties (at 33%), whereas Advisors’ 3rd choice was to act as advisors without interacting directly with other Parties or Providers (33%).

The role of lawyers as “coaches” who provide advice but do not attend processes, was highly unpopular across all stakeholder groups (ranking 4th place with 6%

average popularity ranking), and the option “Parties do not normally want lawyers involved” was even more unpopular across all stakeholder groups (ranking 5th place with 4% average popularity ranking). It thus seems that all stakeholders envision an essential role lawyers in all dispute resolution processes, although not necessarily as a primary spokesperson or advocate.

Session 2 HOW IS THE MARKET CURRENTLY ADDRESSING PARTIES' WANTS, NEEDS AND EXPECTATIONS?

Q 2.1 *What outcomes do Providers tend to prioritise in commercial dispute resolution?*

As opposed to Q 1.1, where Parties were perceived as clearly preferring financial outcomes over action-focused outcomes, Providers seem to prefer action-focused outcomes (at 64%) over financial outcomes (at 56%). All stakeholder groups share his preference.

Interestingly, Providers place little importance on relationships (29% on average), although Non-Adjudicative Providers report notably higher concern for relationships (44% ranking as their 3rd choice), which comes very close to their 2nd choice (financial outcomes, at 47%).

It is also significant that while judicial outcomes rank as 20-22% in importance for Parties and Advisors and as their 4th choice, Adjudicative and Non-Adjudicative Providers placed these outcomes even lower, ranging from 10%-15% in preference. Taking Q's 1.1 and 2.1 together, it seems that that despite the importance of the Rule of Law (see Q 2.2), no group collectively favours judicial outcomes (e.g. legal precedents or legally correct outcomes) as a basis for outcomes as compared to action-focused outcomes, financial outcomes, relationship-focused outcomes and psychological outcomes (e.g. vindication).

Q 2.2 *The outcome of a commercial dispute is determined primarily by which of the following?*

The answers to this question confirm that the “Rule of Law” is the most likely basis on which a dispute will be resolved in commercial or civil disputes today (64% average ranking), despite its comparably low ranking (as suggested by the low rankings of “judicial outcomes” in Q 1.1 and 2.1). Only Non-Adjudicative Providers ranked “Consensus” as their 1st choice, with a high ranking of 70%.

The data here also highlights important differences in perceptions between whether “Consensus” is a likely basis for resolving disputes. Parties, Advisors and Adjudicative providers clearly ranked Rule of Law 1st (67-74%), whereas Consensus was ranked 3rd by Advisors and Adjudicative Providers (at 48% and 45% respectively). Only Parties and Influencers ranked Consensus in 2nd place (at 64% and 59% respectively).

“Equity” as a likely basis for determining a dispute received fairly soft support, ranking 3rd in the collective voting results (at 43%), although Advisors and Adjudicative Providers tend to rank it 2nd at 52-53% respectively, above

Consensus. Parties, on the other hand seemed to have a less definitive view of what is more likely to resolve a dispute, voting Rule of Law 1st (at 67%) but with Consensus following closely in 2nd place (at 64%), although Equity trailed markedly behind at 48% within this stakeholder group.

Interestingly, all stakeholders voted Equity significantly lower than Rule of Law, ranging from 43% on average (the variance being 45%-53%), and Consensus had the widest fluctuations (45% for Adjudicative Providers compared to 70% for Non-Adjudicative Providers). This suggests (not surprisingly) that Parties who are seeking consensus-based outcomes should turn to Non-Adjudicative Providers as opposed to Adjudicative Providers – although Adjudicative Providers seem to prefer it when Parties retain control both over procedural and outcomes (see Q 1.4).

Although Adjudicative Providers seem to favour Consensus-based outcomes, it could be arguably this this is not evident in practice. Whereas for Non-Adjudicative Providers this seems to be what they are seeing in practice, having ranked Consensus as their 1st most likely basis for resolving a dispute. Given Advisors tendency to rank Equity above Consensus, Parties should directly and clearly convey their preferences on these matters.

Q 2.1 suggests that the choice of process is very likely to have a real impact on the outcome. It is also worth noting that Status and Culture ranked low in terms of their perceived influences on outcomes (with average popularity rankings of 12% and 13% respectively).

Q 2.3 *In commercial disputes, what is achieved by participating in a non-adjudicative process (mediation or conciliation) (whether voluntary or involuntary - e.g. court ordered)?*

No clear consensus seems to emerge from this question. Whereas reduced costs and expenses were the top reasons cited by Parties, Advisors and Adjudicative Providers (with an average collective ranking of 52%), retaining control over the outcome was rated as most important by Non-Adjudicative Providers and Influencers (48% on average).

Parties ranked improving or restoring relationships (at 46%), above retaining control over the outcome (at 41%). Despite identifying several benefits of non-adjudicative processes, **few stakeholders perceived non-adjudicative processes as providing tactical or strategic advantages**, which might explain why it is so seldom considered early on in commercial or civil dispute resolution proceedings.

Q 2.4 *Who is primarily responsible for ensuring parties involved in commercial disputes understand their process options, and the possible consequences of each process before deciding which one to use?*

The collective responses clearly indicate that external lawyers (at 64% popularity ranking) and in-house lawyers (at 60% ranking) together are perceived as primarily responsible for ensuring Parties understand their procedural options.

Non-Adjudicative Providers (at 25%) and Adjudicative Providers (at 24%) are in 3rd and 4th place. As an interesting dichotomy within the cross-sorted results, for Parties, their in-house counsel bear primary responsibility for ensuring that clients understand their procedural options (at 73%), while external lawyers deem themselves responsible (at 79%).

What should happen when in-house counsel and external counsel do not agree, remains another matter – although it seems that Parties will choose whatever is deemed most efficient, based on the answers to Q 1.2. Given the importance of familiarity with a particular type of process as the main influence for all lawyers' procedural choices and advice (see Q 1.4 above), it is unlikely that lawyers will recommend mediation or conciliation early on in commercial disputes. In addition, there is a risk that alternatives to litigation and arbitration may be proposed until late in a dispute.

Some support for this conclusion might be drawn from the relative low importance attributed to relationships for all groups in the answers received to date to Qs. 1.2 and 1.3, and the relatively low weighting given to relationships by Advisors as to the benefits of non-adjudicative dispute resolution processes (see Q 2.3).

Q 2.5 *Currently, the most effective commercial dispute resolution processes usually involve which of the following?*

The answer to this question once again raises questions about current practices and which process is perceived as most effective by different stakeholders for resolving civil or commercial disputes. The 1st choice, but with only a 57% preference ranking was “combining adjudicative and non-adjudicative processes”, followed in 2nd place by “pre-dispute or pre-escalation processes” at 42%, and non-adjudicative methods in 3rd place (at 39%).

Encouragement by Providers to cut costs or reduce time was ranked 4th (at 28%), followed by use of adjudicative dispute resolution methods in 5th choice (at 26%). Interestingly, technology (e.g. online processes, electronic case administration and remote hearings) were ranked extremely low – a distant 6th place with a 5% popularity ranking.

The cross-sorted results provide some telling differences, with Parties ranking pre-dispute/pre-escalation measures as their 1st choice (at 61% popularity ranking), followed by combining adjudicative and non-adjudicative processes in 2nd place (at 52% ranking), non-adjudicative dispute resolution in 3rd place (at 37%), encouragement by providers to cut costs and time in 4th place (at 23%), and use of adjudicative processes in 5th place (at 21%).

The Advisor and Adjudicative Provider groups (which voted identically throughout this question) ranked combining adjudicative and non-adjudicative processes as their 1st choice (60-64%), following pre-dispute/pre-escalation measures as their 2nd choice (39-41%), and voted adjudicative dispute resolution as their 3rd choice (at 32-34%), ahead of non-adjudicative processes as their 4th choice (at 31-33%) and encouragement by Providers to cut costs/time delays as their 5th choice (at 24-

27%).

There thus seems to be a big gap between Advisors and Adjudicative Providers who place higher value on adjudicative processes (ranking them in 3rd place at 32-34%) as compared to all other stakeholder groups, who rank adjudicative processes in 5th place (from 16%-26%).

Given the importance and influence ascribed to lawyers as being responsible for informing Parties of their choices (see Q 2.4 above) – and the clear preference for adjudicative processes over non-adjudicative processes by both Advisors and Adjudicative Providers – it would seem that the supply and demand sides of the dispute resolution market may be out of sync when it comes to how they view non-adjudicative processes as opposed to adjudicative processes. It also indicates that combining the two may be a way of addressing stakeholders dissimilar preferences.

The answers to this question suggests an overall consensus that combining adjudicative and non-adjudicative processes is better than current practices and becomes aspirational in conforming actual practice to party preference. More work needs to be done before the use of technology will be embraced by all stakeholders in future, and that there is still a steep learning curve facing the adoption of technology ahead. [This last sentence seems to be tacked on and not well integrated into the preceding discussion.]

Session 3 HOW CAN DISPUTE RESOLUTION BE IMPROVED? (OVERCOMING OBSTACLES AND CHALLENGES)

Q 3.1 *What are the main obstacles or challenges parties face when seeking to resolve commercial disputes?*

The main barriers to dispute resolution for commercial and civil disputes seem to be: financial or time constraints in 1st place (65% ranking); insufficient knowledge of the options available in 2nd place (53% ranking); uncertainty of outcome in 3rd place (35%); emotional, social or cultural constraints in 4th place (29%); and an inadequate range of available options in 5th place (14%).

The cross-sorted results show some notable differences of perception, however. For Advisors, the main obstacle (ranked in 1st place at a very high 75% ranking) is emotional, social or cultural issues, which is only ranked in 4th place by Parties (at 33%) and Adjudicative Providers (at 23%) and in 3rd place by Non-Adjudicative Providers (at 31%) and Influencers (at 30%). It thus seems that **Parties may not perceive the impact of their own emotional, social or cultural states sufficiently** (or that Advisors may be overly sensitive to them).

Although the availability of an adequate range of options does not seem to be an issue (universally ranked as a 5th place issue by all stakeholders), there are still interesting gaps in perceptions regarding whether Parties are actually sufficiently aware of their options. While Non-Adjudicative Providers ranked insufficient knowledge of procedural options as their 1st place obstacle (at 66%), that was ranked as 2nd place obstacle by Adjudicative Providers (at 54%) and Influencers (at

61%), as 3rd place obstacle by Parties (at 37%), and as 4th place obstacle by Advisors.

The paradox here is that Advisors see themselves as being primarily responsible for informing Parties about their options (see Q 2.4), yet they have a slight preference for adjudicative over non-adjudicative processes (see Q 2.5) [their financial self-interest and resultant bias?] and value non-adjudicative dispute resolutions for very different reasons than Parties (especially when it comes to the perceived importance of improving or restoring relationships) (see Q 2.3).

Although they are primarily influenced by the type of outcome desired by the Parties (see Q 1.3), this will not be of great influence for clients unfamiliar with non-adjudicative processes and the impact the choice of process may have on the outcome (see Q 2.5).

A further impediment could be that Advisors see their role as being speakers/advocates for their clients (see Q 1.5), more so than as advisors on process. , Advisors are also self-admittedly influenced by their familiarity with past processes as well as the possible impact a process may have on their fees (see Q 1.3). All of this points to possible latent biases as obstacles to properly informing Parties of their procedural choices, despite their availability.

There are some simple solutions to these obstacles, beginning with greater education, greater self-awareness by Advisors of their possible biases, and greater emphasis on how and when Advisors should ensure they have informed their clients of all their procedural options. This can also help to resolve the primary obstacle regarding financial or time constraints, given the greater efficiency given to combined processes, pre-dispute/pre-escalation provisions and use of non-adjudicative dispute resolution processes (see Q 2.5). Guided Choice at the beginning of proceedings (the universal 1st choice of all stakeholders in response to Q 1.4) can help address these obstacles.

Q 3.2 *To improve the future of commercial dispute resolution, which of the following processes and tools should be prioritized?*

The collective preferred responses to this question were: pre-dispute/pre-escalation processes in 1st place (52% ranking); combining adjudicative and non-adjudicative processes in 2nd place (43% ranking), non-adjudicative processes in 3rd place (34%), encouragement by Providers to reduce costs/time delays in 4th place (28%), use of technology on 5th place (20%), and adjudicative dispute resolution processes in clear last and 6th place (6%).

Although the cross-sorted results were quite homogenous with respect to this question, one notable option stands out as being perceived very differently by different stakeholder groups, which is the use of non-adjudicative processes. They were ranked in 2nd place by Non-Adjudicative Providers (at 46%), in 3rd place by Parties (at 33%), Adjudicative Providers (at 29%) and Influencers (at 35%), but only in 4th place by Advisors (29%).

Given the importance of Advisors in educating Parties about their choices (see the discussion in Q 3.1 above), this suggests once again that self-interest and bias among Advisors against non-adjudicative dispute resolution processes may be affecting Parties more than they realize. This is especially the case if Advisors are more sensitive to detecting the importance of emotional, social and cultural influences on disputes than our their clients (see Q 3.1), in which case a greater use of non-adjudicative processes may be appropriate to allow for greater appreciation of these influences by the Parties.

Q 3.3 *Which of the following areas would most improve commercial dispute resolution?*

This is the first time all stakeholder groups agree on their 1st, 2nd and 3rd choices. Their 1st choice is the use of legislation or conventions to promote the recognition and enforcement of settlement agreements (at 58%), the 2nd choice is the use of protocols promoting non-adjudicative processes (that can be opted out of) before adjudicative processes (at 50%), and the 3rd choice is cost sanctions against Parties for not trying non-adjudicative processes before adjudicative ones (38%).

Accreditation or certification systems for Providers or quality control and complaint mechanisms to regulate Providers were deemed to be of limited value (tied in 4th place with a 22% ranking). The cross-sorted results here only show that Parties and Advisors are slightly more inclined to seek quality control or complaint processes to regulate Providers (at 25-30%), than Providers and Influencers – who see accreditation and certification systems as more productive (at 22-29%).

What is surprising is that despite the universal popularity of the three top choices across all stakeholder groups, they remain infrequent in most places in the world. This suggests that education, promotion and effective service delivery relating to early evaluation and selection of most suitable resolution processed may be “low hanging fruit” for advancing dispute resolution systems, achievable in the near term to improve client choice and access to productive dispute resolution processes. These measures would also help to address any possible biases that may exist within the Advisor stakeholder community against the greater use of non-adjudicative dispute resolution (see Q’s 2.5, 3.1 and 3.2 above).

Q 3.4 *Which stakeholders are likely to be most resistant to change in commercial dispute resolution practice?*

The resounding 1st choice across all stakeholder groups was Advisors (77%), followed by Adjudicative Providers in 2nd place (37%), non-legal personnel in Parties in 3rd place (27%), in-house lawyers in 4th place (24%), governments and ministries of justice in 5th place (22%) and Non-Adjudicative Providers in 5th place (6%).

What jumps out from the cross-sorted results is that Adjudicative Providers (unlike Advisors) do not seem to recognize how resistant to change they may be (ranking themselves in 5th place at 10%), and how they seem to rank Non-Adjudicative Providers in 2nd place (at 36%) as compared to all other stakeholder groups, who ranked them at 5th place with single digit rankings ranging from 2-7%). This

suggests a lack of synergy between Adjudicative Providers and Non-Adjudicative Providers, which can easily be improved by more dialogue and collaborations within the Provider community.

This would also be in line with the repeatedly expressed preferences that greater emphasis should be placed on combining adjudicative and non-adjudicative processes, which will require all Providers getting together to explore how to do so. While it may be argued based on these results that Adjudicative Providers are in denial about their own resistance to change, it is interesting to note that Advisors cannot be accused of this, having also ranked themselves as being most resistant to change.

Another interesting observation is that although Parties view governments and ministries of justice as significantly resistant to change (in 3rd place at 29%), they are ranked in 4th place by Advisors (at 23%) and Influencers (22%), and in 5th place by all Providers (17-21%).

Q 3.5 *Which stakeholders have the potential to be most influential in bringing about change in commercial dispute resolution practice?*

There are no clear answers to this question. Although the collective votes list governments and ministries of justice in 1st place, Adjudicative Providers in 2nd place, and Advisors in 3rd place, they are all within a narrow bank of low popularity ranking, showing a 40-47% ranking.

It is interesting to note that Parties are perceived as having very little influence (in-house lawyers being ranked in 4th place at 29% and non-legal personal in 5th place at 21%), whereas Non-Adjudicative are perceived as being the least influential of all (in 6th place at 17%).

The cross-sorted results merit close attention. Whereas Parties and Advisors voted very similarly (with some minor differences), ranking external lawyers as being the most influential stakeholders to bring about change in 1st place at 40-53% ranking (an assessment that is supported by the responses to previous questions regarding possible biases by Advisors in favour of adjudicative processes over non-adjudicative processes), governments and ministries of justice were the clear favourites of Providers and Influencers (with rankings of 44-60%).

Once again, Adjudicative Providers seems to have singled out Non-Adjudicative Providers in a curious way, ranking them as 2nd most influential (although at a relatively low ranking of 36%), whereas all other stakeholders ranked them as extremely likely to have any influence (in 5th or 6th place, with 14%-21% rankings).

The answers to this question, overall, appear to be fully congruent with the most effective changes identified in the responses to Q 3.3 (i.e. legislation to recognize settlement agreements, use of protocols promoting non-adjudicative processes before adjudicative processes, and cost-sanction mechanisms). All three of these changes require the input of governments, ministries of justice and Advisors as instruments for creating a positive change.

Session 4: PROMOTING BETTER ACCESS TO JUSTICE: WHAT ACTION ITEMS SHOULD BE CONSIDERED AND BY WHOM?

Q 4.1 *Who has the greatest responsibility for taking action to promote better access to justice in commercial dispute resolution?*

The results to this question correlate well with the answers to Q 3.5. Governments and ministries of justice are collectively ranked 1st at 69%, followed by Adjudicative Providers in 2nd place (53%), Advisors in 3rd place (33%), Non-Adjudicative Providers in 4th place (16%), and Parties in 5th and 6th place (14% for in-house lawyers and 11% for non-legal personnel).

The cross-sorted results show complete unanimity and homogeneity with respect to the 1st, 2nd and 3rd choices above, save for Non-Adjudicative Providers ranked in 5th place by Parties at 16% (after in-house counsel) and ranked in 6th place by Adjudicative Providers (at 9%). Adjudicative Providers also tended to attribute greater responsibility to Parties than any other stakeholder group, ranking their non-legal personnel in 4th place (at 14%) and in-house lawyers in 5th place (at 14%). Once again, these responses appear to be consistent with the three most popular changes proposed in the responses to Q 3.3.

Q 4.2: *What is the most effective way to improve parties' understanding of their options for resolving commercial disputes?*

The answers to this section are the most fragmented ones of the GPC Series, although they are consistent with the answers to Q 3.3, and suggest an initial “low hanging fruit” solution. The top-ranked collective response was education in business schools and law schools in 1st place with a 60% popularity ranking. Whereas requiring Parties to attempt non-adjudicative processes before adjudicative processes came in 2nd place (at 38%); and procedural requirements for Advisors and Parties to declare they have considered non-adjudicative processes before trying adjudicative processes in 3rd place (at 35%). Creating collaborative dispute resolution centres or hubs to promote greater awareness of choices scored lower in the rankings coming in 4th place (at 34%), while providing access to experts to guide the parties in selecting the most appropriate process in each cases (i.e. Guided Choice) was in 5th place at 28%.

The cross-sorted results demonstrate that while there is uniform acceptance of education in business schools and law schools as the 1st choice for improving Parties' understanding of their options across all stakeholder groups, there was no consensus on the remaining choices between all stakeholder groups, save for Parties and Influencers who ranked each option identically, with small differences in percentages.

Parties and Influencers see creating collaborative centres or hubs as the 2nd most popular approach to educating Parties (40%); providing access to Guided Choice experts as their 3rd choice (at 36-37%); requiring Parties to attempt non-adjudicative processes before adjudicative ones in 4th place (at 30-33%), and

creating procedural requirements for declarations by Advisors and Parties that they have considered non-adjudicative methods before initiating adjudicative processes in 5th place (at 28%). Whereas Advisors and Providers all agreed on their 1st choice (education at 55-63%), and on the same last choice (providing access to Guided Choice experts, at 19-26%), they differed significantly from one-another in their 2nd, 3rd and 4th choices.

Requiring Parties to attempt non-adjudicative processes before adjudicative processes was ranked 2nd place by Advisors (at 40%), 3rd place by Non-Adjudicative Providers (at 42%), and 4th place by Adjudicative Providers (37%), whereas procedural requirements for declarations of first having considered non-adjudicative processes before adjudicative ones was ranked in 2nd place by Non-Adjudicative Providers (at 42%) and in 3rd place by both Advisors (at 37%) and Adjudicative Providers (at 37%).

Creating collaborative dispute resolutions centres/hubs was equally lowly ranked by Advisors and Non-Adjudicative Providers in 4th place (at 29% and 32% respectively).

The answer to this question only goes to show that save for greater emphasis on education, the views of the dispute resolution marketplace remain highly fragmented and there is no clear consensus, although it should be highlighted that this may be influenced by the fact that none of these proposed changes require action by both governments/ministries of justice and external lawyers, who were all ranked as being potentially the most influential stakeholders together with Adjudicative Providers in response to Q 3.5.

Q 4.3 *To promote better access to justice for those involved in commercial disputes, where should policy makers, governments and administrators focus their attention?*

This question also led to highly fragmented responses. The top four answers are very close in ranking to one-another, with relatively low popularity rankings:

- in 1st place are pre-dispute or early-stage systems using third party advisors who will not be involved in any subsequent proceedings (at 48%);
- in 2nd place (tied) are the use of protocols for non-adjudicative processes before adjudicative ones and making non-adjudicative processes compulsory (with an opt out) before permitting access to adjudicative processes (at 45%);
- in 3rd place is legislation for the recognition and enforcement of settlements reached (42%); and
- followed in distant 4th place by reducing pressures on the courts (14%), which was the only common answer ranked equally as the last choice by all stakeholder groups.

The cross-sorted results provide a puzzling picture and an absence of consensus. No two stakeholder groups had the same preferences. Parties ranked their preferences with higher popularity rankings than other stakeholder groups.

Overall, however, none of these answers seem to be clearly appealing, although they may be acceptable. The two first most popular answers are consistent with Guided Choice and a greater emphasis on training Advisors and Providers to consider all forms of dispute resolution in each case.

Q 4.5: *Which of the following will have the most significant impact on future policy-making in commercial dispute resolution?*

Two options stand out as being the most likely to influence the future of commercial dispute resolution. They are:

- in 1st place, demand for increased efficiency and use of technology (at 63%);
- demand for certainty and enforceability in 2nd place (at 60%);
- distantly followed by demand for increased uniformity and standardization in 3rd place (at 24%);
- demand for increased transparency in 4th place (22%); demand for processes allowing parties to represent themselves without lawyers in 5th place (14%); and demand for greater review of Adjudicative Providers in 6th place (11%).

Apart from the clear preferences by all stakeholders for the first two options (with small variations across stakeholder groups), the cross-sorted results do not provide any useful results save for the markedly disparate patterns of voting, which might suggest a certain apathy for this questions.

The answers can overall be interpreted as supporting greater use of technology and demand for greater certainty regarding the use and enforceability of outcomes reached through combined or tailor-made dispute resolution processes, but it is difficult to extract significantly more meaning from these answers.

From IMI's perspective, the relatively low ranking of the option "demand for increased uniformity and standardisation" for Providers could be disconcerting, given that this is one of its missions, but it may simply be that many of the confidence-building measures that this question presupposes may not yet be sufficiently understood by the global dispute resolution community.

4. Conclusions:

It is premature to draw any firm conclusions from the GPC data to date. A complete review of the final data by the Academic Committee at the end of the series will be needed. In the meantime, these preliminary results do provide some intriguing food for thought. Questions 3.3 and 4.2 provide what seem to be some congruent and feasible "low hanging fruit" types of ideas that warrant further exploration.

Furthermore, the cross-sorted results show the complex relationship and fragmented perceptions that exist between the demand and supply side of the dispute resolution. Although Advisors and Providers voted differently more often than not, it is clear that no group on the whole view current commercial dispute resolution processes as optimal and not in need of change.

Advisors and Providers should also try to work more closely with Parties to align perceptions of the market. It is bewildering to note in the events to date how few meetings allow judges, arbitrators, mediators, government officials, lawyers and especially disputants to sit together and discover how their perceptions of one-another may be biased or flawed.

The good news is that although there seems to be a consensus that Parties do have varied choices when faced with dispute resolution options, they tend to be unaware of these choices, and the advice they are receiving may be skewed or biased. External lawyers and in-house counsel clearly have a key role and are of great potential influence in changing the future of dispute resolution, some of the answers from Adjudicative Providers (see, e.g. Q's 3.4, 3.5 and 4.1) clearly suggest that more dialogue is needed between Adjudicative and Non-Adjudicative Providers.

Finally, the preliminary data suggest three emerging trends: 1) the greater need for emphasis on greater speed, efficiency and cost reduction in dispute resolution processes, 2) the growing need to ensure Parties are properly advised, early on, about their procedural options and whether or not they wish to abdicate control of all or part of their disputes to Providers, 3) the growing interest in pre-dispute/pre-escalation measures and increasing lawyers' and Parties' familiarity with non-adjudicative processes, and 4) a growing interest in mixed modes of adjudicative and non-adjudicative dispute resolution, which may require a new range of skills and strategic Advisors.

Advisors will clearly always have a role to play and are key stakeholders in the dispute resolution community. However, their abilities to detect emotional, social and cultural obstacles may require greater flexibility when it comes to designing processes. The future involvement of new technologies to diagnose, guide and assist their clients in reaching faster, cheaper and better outcomes could also be highly beneficial.